Black Hawk Co./P.P.M.E. Local 2003(Support) 2005-2006 CEO 76 SECTOR 2

IN THE MATTER OF FACT-FINDING

BETWEEN

Black Hawk County,

Employer,

and

Public Professional & Maintenance Employees, Unit 1, IUPAT Local 2003,

Union.

BEFORE:

Kim Hoogeveen, Ph.D.
Fact Finder

Issued: February 11, 2006

APPEARANCES:

For the Union (PPME Unit 1):

Joe Rasmussen, Business Representative
Wayne J. Schoo, Team Member
Denise Bishop, Team Member
Deborah Dowd, Team Member
Renae Fenske, Team Member

For the Employer (County):

Gary L. Ray, President Ray and Associates
Donald C. Hoskins, Attorney
Brian Gruhn, Attorney
June Watkins, Human Resources Director
William F. Robinson, Jr., Area VP – Gallagher Benefit Services
Sherri L. Niles, Administrator, Country View
Grant Veeder, Auditor
Debra Bunger, Administrative Aide

STATEMENT OF JURISDICTION

The parties began the bargaining process for this contract with the Union making initial proposals to the County on September 19, 2005 and the County responding with opening proposals on September 30. Two bargaining sessions were held in November and a mediation session was held on December 20, 2005. With no tentative agreements, this matter proceeded to a fact-finding hearing pursuant to the statutory impasse procedures established in the Public Employment Relations Act, Chapter 20, Code of Iowa. The undersigned was selected to serve as Fact Finder from a list furnished to the parties by the Iowa Public Employment Relations Board.

The fact-finding hearing was convened at 10:00 a.m. on **January 31, 2006** in the Black Hawk County Courthouse in Waterloo, Iowa. There was no dispute regarding the jurisdiction of the Fact Finder. The hearing was electronically recorded solely for the purpose of an aid to the Fact Finder; the resulting recordings of the hearing were destroyed concurrent with the issuing of this award. There are disputes regarding negotiability for several language issues, and the County has filed a Petition for Resolution with PERB. Notwithstanding the petition, the parties agreed that the Fact Finder was to rule on all issues put before him in the course of the fact-finding hearing. It was agreed by the parties that the Union would present their case first, with the Employer to follow, and opportunity for both parties subsequently to rebut. The parties had mutually agreed prior to the hearing to wave all statutory deadlines related to possible subsequent impasse procedures so as to assure the Fact Finder a full fifteen (15) days in which to render a recommendation.

Both parties were provided a full opportunity to present exhibits, evidence, witnesses, and arguments in support of their respective positions. The fact-finding recommendations below are made on the basis of the evidence, facts, and arguments presented by the parties.

FACT-FINDING CRITERIA

The Iowa Public Employment Relations Act specifies criteria that are to be used by an Arbitrator in assessing the reasonableness of the parties' proposals. Although the statute is silent regarding criteria to be used by fact finders, it is now well accepted that fact finders should base their recommendations on the statutory criteria set forth in Iowa Code 20.22(9):

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. *Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.*
b. *Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.*
c. *The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.*
d. *The power of the public employer to levy taxes and appropriate funds for the conduct of its business.*

BACKGROUND

Black Hawk County, the fourth most populous in Iowa, is located in the Northwest quadrant of the State and includes the cities of Cedar Falls and Waterloo. The County operates under a five-member Board of Supervisors, with each being elected at large to four-year terms. In addition to this unit (designated PPME Unit 1), the County also bargains with seven other employee units, two of which are also represented by PPME. The County also employs a good number of individuals who are not represented by a bargaining unit. Of the eight bargaining

units, as of the date of this hearing, (a) two units had settled new contracts for next year, (b) two units will next year be in the second year of a multi-year agreement, (c) one is reported near agreement, and (d) three units (i.e., all three of the PPME units) remain unsettled and engaged in impasse process with a fact-finding hearing having been held for one of the units prior to this hearing on 1-27-06 and a third hearing scheduled for 2-3-06.

The County employs approximately 650 individuals with Unit 1 representing approximately 70 secretarial, clerical, and other non-supervisory office type positions who work in a variety of County offices and departments including Auditor, County Attorney, Treasurer, Sheriff, Human Services, Veteran Affairs, and the Country View Care Facility. Union and County exhibits are inconsistent in the number of employees in this unit, with the County showing 69 and the Union referring to 72 current employees. This discrepancy may be related to approved positions verses currently filled positions and is not significant with respect to the recommendations made herein. The Union also notes that the County has announced its intention to eliminate five current positions (Recovery Officers) at the end of this fiscal year. There also exists a discrepancy between the parties in their exhibits showing the number of employees in this Unit taking single/family health insurance with the Union showing it as 21/41 (Exhibit 24) and the County as 21/38 (Exhibit Ins-3).

The parties used several of the same counties in their comparison group, i.e., Black Hawk, Linn, Scott, Johnson, and Dubuque. The Union added Clinton County to this listing and the County included Pottawattamie and Woodbury Counties from the western side of the State.

ITEMS AT IMPASSE

Permissive Subjects of Bargaining

The County submitted a Petition for Resolution of Negotiability Dispute with the Iowa Public Relations Board (Case No. 7218) on January 27, 2006. The County is proposing the deletion of a considerable amount of language from the current contract, asserting that such language provisions are illegal and/or permissive subjects of bargaining. As Fact Finder, I have no authority or obligation to issue a recommendation as to the resolution of this matter, and these recommendations are issued contingent upon PERB's subsequent determination of the permissive or mandatory nature of the contested subjects of bargaining.

Leaves of Absence

Position of the Union: The Union is proposing to insert new language that would replace ARTICLE 13, STEWARD with a new ARTICLE entitled, UNION LEAVE to read as follows:

> *Employees designated as Stewards or as bargaining team members by the Union shall receive a paid leave of absence as Union Leave for the employees' hours of work necessary to attend joint collective bargaining negotiations, mediations, fact-finding, interest arbitrations, or steps of the grievance procedure with the Employer.*

Position of the County: The County is proposing to change the second paragraph in the language of ARTICLE 8 (Leave of Absence), Section 6 (Federal Family and Medical Leave Act). Employees who request and are granted a leave of absence pursuant to FMLA currently have the option to use accrued paid leave to cover a portion or all of their FMLA leave. The County is proposing new language that would require the use of such leave concurrent with FMLA leave. The following is the new contract language proposed by the County to replace the second paragraph in ARTICLE 8, Section 6:

> *An Employee who requests and is granted leave of absence pursuant to the 1993 Federal Family and Medical Leave Act (hereinafter called FMLA)*

shall use accrued paid leave (i.e., sick leave, vacation, compensatory time, personal leave) at the same time as the FMLA leave is used.

In ARTICLE 15 (Sick Leave), Section 7 (Date of Employment) the County is requesting what both parties term a clerical revision. The County proposes to drop the first six words of Section 7, (i.e., *For the purpose of this chapter*) and begin that section with, "*An employee…*"

Discussion: With respect to the Union's proposal for new language to provide paid time off for Stewards or designated bargaining team members when necessary to attend joint collective bargaining negotiations, mediations, fact-findings, interest arbitrations, or steps in the grievance procedure, the County correctly points out that Fact Finder James Cox rejected this proposal when making recommendations for PPME Unit #3 in his ruling of 4-22-05. In directing me to that ruling, however, the County runs into a bit of a problem. Based on the exhibits presented at this hearing, there appears to be questionable validity for the Fact Finder's assertion that other units in Black Hawk County do not have such paid benefits and there appears to be absolutely no justification for the Fact Finder's statement that the Union's proposal "lacks external comparability." I suspect that the County is aware of the reasonableness of the Union's request with respect to external comparability in that they presented no such information at the hearing and did not refute the substantial exhibits shown by the Union to demonstrate such comparability.

The parties are operating under a collective bargaining agreement whereby conditions of employment are outlined, including an employee's right to have grievances reviewed in a fair and orderly manner. It is reasonable to expect that the employer will have selected individuals who are familiar with both the grievance process and the collective bargaining agreement to represent the County's interest in that process. It is unreasonable to assume (and as a practical manner, undesirable) that all employees will take the time to become "experts" in a grievance procedure or the collective bargaining agreement. As

such, it is in the interest of all parties to have the Union provide assistance through the grievance process. As such, the existing contract language is reasonable and prudent, i.e., allowing Union Stewards to investigate and process grievances after securing appropriate permission from their immediate supervisor.

Any aggrieved employee and reasonable Union representation, as well as all witnesses called by the County or the Union, should be granted time off with pay to attend grievance hearings. To disallow such pay would inhibit the fact-finding process. To deny such pay to a grievant would impose a penalty prior to the employee having exercised his or her contractual rights to review, thereby setting up a needlessly confusing scenario whereby restitution would need to be made dependent upon the ultimate resolution of the grievance. Finally, the cost of providing paid leave with supervisor approval to Stewards for the purpose of assisting with the grievance processes stipulated in the collective bargaining agreement is minimal.

Although I am much less persuaded by an equity or common interest argument regarding paid leave to participate in the negotiation process (e.g., it is one thing to mandate that employers engage in the collective bargaining process; it is quite another to suggest that employers should also pay for that privilege), it would appear that many of the counties in the comparison group do provide such paid leave. The Union's proposed language here, however, is overly broad with respect to both comparability and equity. It would provide an unlimited amount of paid leave for Union members to pursue a laundry list of activities – some of which might not have improved County operations and services as their prime objective, and provides no collaboration with management with respect to the Steward's work responsibilities. It is unreasonable for the Union to expect the County to have an open checkbook to support Union negotiation activities. Most of the counties in the comparison group limit how much paid time is available to the Union for negotiating activities. For example, Clinton County restricts the

number of Union negotiators to four (4) and limits such release time to 20 hours per individual; Woodbury County restricts negotiation leave to three (3) employees with no employee receiving more than 40 hours of pay for negotiation activities; Pottawattamie County allows one employee from each department to attend negotiation meetings without loss of pay; Scott County allows three (3) employees to participate as members of the bargaining team with no employee receiving more than 40 hours of pay pursuant to this activity; Johnson County allows paid leave for three (3) members of the bargaining committee for loss time during normal working hours while in joint meetings with the employer and limits such paid leave to 40 hours per fiscal year to be divided by the designated bargaining team members; Linn County allows a maximum of eight (8) Union representatives to be paid for negotiation sessions with the employer up to a maximum of six (6) total work days; and Dubuque County allows paid leave of absence for elected or appointed negotiating representatives who are attending negotiation sessions with, and agreed to by, the employer.

Given my rejection of the Union's proposed language as too broad, and a reasonable reluctance as a neutral to author significant new language that neither party has proposed or has been negotiated at the table (i.e., wanting to avoid the troublesome outcome of unintended consequences), I recommend that the current language of ARTICLE 13 be retained. Should it not be retained as a result of the ongoing negotiability review by PERB, I suggest that the County understand that subsequent neutrals will likely be persuaded to insert new language along the lines I have outlined above.

The County's proposal for new language to require the use of leave days when employees are granted FMLA leave would appear to be consistent with the practice currently followed in most, if not all, of the comparability groups. County Exhibit L-8 shows the requirement for concurrent use of paid leave to be present in Linn, Scott, Johnson, Woodbury, Dubuque, and Pottawattamie Counties. The Union did not contest the accuracy of this report, but instead relies upon

precedent and bargaining history. The Union reports that they just last year made a concession in the language of this ARTICLE 8, Section 6 in response to what they hoped would be an ability to keep permissive language in their contract. They argue that the additional language the Union agreed to just last year has not had adequate time to be evaluated.

Much like the issue above, where the Union has comparability on their side, the County does in this regard. Yet there exists a bargaining history here that may well account for the unique aspects of this agreement. As the County strongly argued in their presentation, neutrals should be reluctant to impose new language unless there exists a significant hardship and (I believe) a demonstrable record of intransigence on the willingness of the other party to address the issue.

Neither party made much comment regarding the clerical change requested by the County to Section 7 of ARTICLE 15. The Union's resistance seems born of petulance more than reason.

RECOMMENDATION

ARTICLE 13, Stewards: Retain current contract language
ARTICLE 8, Section 6 (FMLA): Retain current contract language – the Union's Position
ARTICLE 15, Section 7 (Date of Employment): The County's Position

Hours of Work

Position of the Union: The Union wishes to change the title of ARTICLE 14 (Hours of Work and Overtime), Section I from "Probable Work Week" to "Work Week." The Union proposes new language for Section I that would retain the current language ("*For all unit employees, the probable work week will be forty (40) hours.*") and add the following:

The normal work week for a full-time employee shall be thirty-two (32) hours or more with all benefits. The normal work week for a part-time employee shall be less than thirty-two (32) hours with pro-rated vacation and insurance benefits. Part-time employees working less than fifteen (15) hours per week receive no benefits.

The Union also requests the addition of a new Section 9 to ARTICLE 14. The Union's proposal would insert into the contract a specification of the starting and ending shift times and rotations for all full-time employees covered by the bargaining unit. The Union's proposal specifies the starting and ending times for individual departments, e.g., auditor, attorney, treasurer, recorder, sheriff, relief, veterans affairs, management information systems, engineer, nursing facility, human services, and child support recovery.

Position of the County: Current Contract

Discussion: The Union's proposal regarding the change to the definition of full and part-time employees is problematic in several regards. First, it would make part-time employees eligible for benefits at or above fifteen (15) hours per week. This would result in individuals who work 780 hours or more per year being eligible for pro-rated benefits. The current contract (see ARTICLE 21) requires employees to have completed at least 1200 hours of work in the previous year to be eligible for pro-rated benefits. Given an insurance program that is already under stress, it would not be wise to encourage more plan participants to secure benefits based on such limited work time per week. In addition, the County is correct in pointing out that this first part of the Union's proposal also has implications for ARTICLE 25 (Vacation) with respect to which employees are eligible for full-time versus part-time vacation accrual rates. The accrual rates are based on one week of vacation during the first year of employment, two weeks of vacations for years two through four, three weeks of vacation for years five through twelve, etc. These vacation amounts were surely predicated on an assumption that full-time employees would work forty (40) hours. The Union's proposal would allow the same vacation accrual for 20% less work. It is unclear

if prorating for part-time would then be based on the "probable" work week of forty (40) hours or the newly defined full-time criteria of thirty-two (32) hours as the standard for full-time.

The Union's motivation for making the proposal to specify a starting and ending shift time is a result of an earlier PERB negotiability ruling regarding the contract of another unit that found similar language to that contained in ARTICLE 14, Section 4, requiring the employer to post a work schedule two (2) weeks in advance, to be permissive. In his 6-10-05 ruling regarding the County and PPME Unit #3, Arbitrator Michael Thompson noted the irony that this ruling to strip the contract of this language was initiated by the Union's own petition to PERB. There was also little to no comparability data provided by the Union, either internal or external, to justify this change in language.

This is an instance where the Union has a sensible objective, i.e., to allow employees to be assured of a reasonably predictable workday, but their specific proposal does more damage than good. Considerable evidence, including testimony from Grant Veeder, County Auditor, and Sherri Niles, Administrator of Country View, indicated that the Union's proposal is simply too rigid to allow for past practice and ongoing efficient departmental operations. In some instances the employees would be adversely impacted.

The Union seems to be particularly concerned with what they believe to be the impending removal of the requirement that the employer post a work schedule two weeks in advance. Testimony was provided, and not refuted by the Union, that after this language was recently struck from Unit 3's contract, the County has continued its traditional practice of posting the work schedule via policy.

Sometimes advocates become so myopic regarding the conduct and importance of their negotiations that they lose sight of the basic forces of the marketplace that also impact employer and employee behavior. To maintain adequate

staffing levels with quality employees, an employer must provide a work environment and working conditions that a reasonable person would deem adequate. As Ms. Niles pointed out in her testimony, recruiting and retaining good staff is often a considerable challenge. Something so basic as providing reasonable notice of shifts is not something that any employer is likely to either want or be able to afford to discontinue.

Of all the issues discussed at this hearing, nowhere was it more apparent that the two parties had failed to conduct a reasonable discussion through the bargaining process. Each party acknowledged that they had no particular problem with the current language in the contact. The Union proposal is simply a reaction to what they anticipate will be the negative implications from an upcoming PERB ruling. The County stated that they have no problem with the existing language, have no intention of stopping the practice of posting schedules, and in fact have continued to do just that in the instance where this formal language was removed from Unit 3's contract.

RECOMMENDATION:

Retain current contract language – the County's position.

Shift Differential

Position of the Union: No change in the contract.

Position of the County: The County proposes to add a new paragraph to ARTICLE 14 (Hours of Work and Overtime), Section 5 (Shift Differential). The additional, new paragraph would read as follows:

> *"Shift differential shall only be paid on straight time and overtime hours actually worked. Paid leave time shall not be subject to shift differential."*

Discussion: The County has shown no history of employee intransigence nor have they shown current practice to be a significant financial or operational burden for the County. This language has been negotiated at the table, and just last year the Union agreed to a modest language modification in this section through the bargaining process. Union notes that few members of this bargaining Unit are eligible for shift differential. Given that the employer did not bother to cost the projected savings from this proposal, I suspect that is accurate.

An employee accepts a job on the basis of an anticipated total compensation rate. If that employee is primarily scheduled to work a shift that is subject to a shift differential, market forces have determined that additional pay is warranted for the obligations of that specific position having to work those specific hours. The employee does not receive two paychecks, i.e., one for their base rate and one for his or her shift differential. There is a single, total compensation rate for which the employee has agreed to provide his/her labor, and I can find no justification for reducing that hourly compensation rate when the employee elects to make use of his/her earned leave.

The comparability data, as provided in County Exhibit L-9, is mixed.

RECOMMENDATION:

Retain current contract language – the Union's position.

(Note: I would add one additional recommendation that is purely grammatical and of no substantial import to the parties. In ARTICLE 14, Section 5, I would recommend inserting the word "cents" in the first sentence before the word "per" and in the second sentence inserting the closing parenthesis after $.25 and inserting the following words after that closing parenthesis, "cents per hour." The first two lines of this section would then read "the employer shall pay a shift

differential of twenty ($.20) cents per hour for all hours worked during the second shift. A premium of twenty-five ($.25) cents per hour shall be paid...).

Vacation

Position of the Union: No change.

Position of the County: Consistent with the preceding County proposal, the County is here suggesting a language change to ARTICLE 25, Vacation, that would alter the definition of vacation pay so as to eliminate the shift differential.

Discussion: The County has not met the burden it carries to demonstrate a need for contract language change – see previous discussion.

RECOMMENDATION:

Retain current contract language – the Union's position.

Overtime

Position of the Union: No change.

Position of the County: To add new language to ARTICLE 14, Section 6 (Overtime) change the eligibility for overtime to forty (40) hours of work per week and thereby eliminate the current practice of paying overtime after eight (8) hours per day or on a regularly scheduled day off. The County's proposal would also eliminate all paid leave as counting toward hours worked for overtime and remove the language in Section 6 of ARTICLE 14 that states "*the employer will make every reasonable effort to ensure the equitable distribution of overtime in accordance with qualifications and ability.*"

Discussion: The Union makes a strong argument showing a long and systematic history of this issue being discussed and settled at the bargaining table. Not only did the County fail to show strong comparability evidence that would justify consideration of their proposal, they did not even bother to project the cost savings that would accrue from their proposal. Additionally, I can find no compelling reason to alter language in the current contract indicating that the County should make a reasonable effort to ensure equitable distribution of overtime.

RECOMMENDATION:

Retain current contract language – the Union's position.

Evaluations

Position of the Union: The Union proposes to change ARTICLE 20, Evaluations, so as to allow employees to grieve any below average evaluation. Language in the current contact allows employees to file such grievances only if it results in the loss of a merit increase.

Position of the County: The County has proposed a deletion of ARTICLE 20 from the collective bargaining agreement as a permissive subject of bargaining. During testimony, however, the County acknowledged, and Union Exhibit #2 appears to concur, that they fully expect some, if not all parts of this ARTICLE, to remain as a mandatory part of the contract. Specifically, the parties agree that the final sentence under question will remain as a mandatory part of the contract.

Discussion: The Union makes the somewhat ingenious argument that employees actually do not need any change in the current language in order to be able to grieve any below average evaluation. It is the Union's contention that the sentence, "*Employees may grieve the results of a below-average evaluation*

if it results in the loss of a merit increase." simply asserts the right to file a grievance in that particular situation and does not bar an employee from filing a grievance to contest any evaluation. Testimony was presented that a grievance has already been filed to test the Union's interpretation of this current language. This seems to put the Union in the odd position of here arguing that they want a recommended change in the language so as to allow employees to grieve evaluations while simultaneously making the argument existing language already guarantees that right.

The Union expresses a concern that "employees fear that the Employer will be free to stuff their personnel files with disciplinary actions, and they have no recourse to challenge that action when it results in a poor evaluation leading to discharge." The Union gave no indication as to why an employer would want to take such action to rid themselves of a good employee nor has the Union shown any evidence of an instance, let alone a pattern, of such employer behavior having occurred. This Fact Finder joins previous neutrals in being reluctant to change the status quo without some indication of an actual problem that existing beyond the hypothetical.

RECOMMENDATION:

The current language in the contract should be retained.

Insurance

Position of the Union: To increase the current monthly employee contribution toward family coverage from $75 to $90 dollars and eliminate the current $10 co-pay for in-network office visits, as shown in the chart below. The Union is also proposing to add a Health Savings Account as an alternative insurance program in which employees could elect to enroll.

Position of the County: To increase the current monthly employee contribution toward single health coverage from $25 to $50 and for family coverage from $75 to $100 dollars. The County is proposing several changes in the current health insurance plan as shown, along with the Union's position, in the following chart:

Preferred Provider Plan

	Current	Union	County
Deductible:			
Single	250	250	500
Family	500	500	1000
Co-Pay	10	-0-	20
Co-Insurance	85/15	85/15	85/15
Out-of-Pocket Max			
Single	750	750	1000
Family	1500	1500	2500

Non-Network Provider

Deductible			
Single	600	600	1500
Family	1200	1200	3000
Out-of-Pocket Max			
Single	1500	1500	3000
Family	3000	3000	6000

The County is also proposing a change in drug coverage by adding a maximum per fill charge of $20/$40/$80 to the existing percentage co-pays for

generic/formulary/non-formulary for retail purchases at a preferred pharmacy. They are also proposing a change to the 90-Day Mail Order Prescription coverage that currently gives an incentive by giving the last 30 days free of charge by replacing that provision with a $10/$30/$60 co-pay for generic/formulary/non-formulary prescriptions. Drug costs now count toward the employee's out-of-pocket maximums. The County is additionally proposing to change this practice with drug co-payments no longer being counted toward out-of-pocket maximums. (Note that County Exhibits INS-6 and INS-20 are both in error as they purport to show maximum out-of-pocket for non-network providers, but instead appear to show deductibles for out-of-network services.)

Finally, the County is proposing a language change that would change the current language at the end of the first paragraph in Section 1 of ARTICLE 21: *"The Employer shall have the exclusive right to select the carrier for such insurance without reduction or change in benefits. The Employer agrees to maintain group health insurance for each employee equivalent to that in effect on the effective date of this agreement."* to the following: *"The Employer shall have the exclusive right to select the carrier for such insurance. The Employer agrees to maintain group health insurance for each employee* ***substantially*** *equivalent to that in effect on the effective date of this agreement."* (emphasis added by me only for clarity). The County is likewise proposing a similar change in the wording of the last sentence of Section 3, ARTICLE 21: *"The Employer shall maintain the exclusive right to select the carrier for such insurance without reduction or change in benefits."* to *""The Employer shall maintain the exclusive right to select the carrier for such insurance without* ***substantial*** *reduction or* ***substantial*** *change in benefits."* (emphasis again added by me only for clarity).

Discussion: Helpful testimony was provided by benefits consultant, William F. Robinson. There is no doubt, and the Union did not contest the fact, that Black Hawk County's self-funded health insurance trust is not in good financial health. The basics are not hard to follow: the trust balance (i.e., plan reserves) is below

what is not only prudent, but also likely soon to be required by the Iowa Department of Insurance. They are now recommending/requiring a larger reserve – something that will require the addition of some $800,000 into the insurance trust as it now stands. Even the most optimistic outlook for this fiscal year will see only a modest improvement in the plan's reserves.

There exist discrepancies between County and Union exhibits showing the premium costs in comparison counties (e.g., see County Exhibit INS-4 vs. Union Exhibit 27), but in general it appears safe to say that the premiums in Black Hawk County are above average. Even accepting the Union's rates for Dubuque County (shown higher by the Union than the rates reported by the County), and removing the low rate counties of Woodbury and Pottawattamie that the Union wishes to exclude from the comparison group, Black Hawk (BH) premium rates are still at the mean for single rates (BH $420 vs. $423) and slightly above the average family (BH $1,054 vs. $1,044) rate. Black Hawk is next year planning to increase premiums by 15% – anticipating that 10% of the increase will go toward covering increased costs and hope that the remaining 5% can help to start to restore the financial stability and health of the insurance reserves.

This unit is part of a self-insured health plan that insures non-bargaining employees and employees who are represented by seven other bargaining groups. The County makes the argument that if one group is allowed to contribute less to the support of the plan than another, those paying more subsidize those who are paying less. This is not the most powerful argument. First, each bargaining unit has the right and ability to negotiate their unique benefits and coverage levels. On two occasions I inquired as to whether or not having different insurance coverages for each of the respective bargaining units was a problem with respect to plan administration. The County conceded that the plans presently differ between the various groups and that it was not a hardship with respect with plan administration. Secondly, one unit may well have conceded something else in the course of negotiations (e.g., wages) to secure a

given insurance benefit that was important to them. Neither party, however, presented any such argument at the hearing.

The Union basically hangs its hat on the argument that the health trust has been "mismanaged" by the County. What they really mean by that is that the County has not been putting enough money into the health trust to keep it strong. I would differentiate between the terms "mismanaged" and "under-funded." If the Union is going to argue that the County has under-funded the plan, then we should look to see if, in fact, the County has shown a history of not putting additional monies into the health plan to pay for anticipated expenses. According to testimony and just looking at the reserve fund balance over the years, it is likely that the County did not fund the health plan as aggressively as the consultants had recommended in the late 1990's and 2000. When, however, the County's premium contributions are reviewed it is clear that the County has continued to put more and more dollars into the health plan for many years, and that the employee's share of the financial burden has not risen commensurate with that borne by the County. For example, between 2000 and this present contract year, the County has increased its respective monthly payments toward single/family health coverage by $234/$580 while the employee contribution has increased by $15/$65. (I did note the Union's comments regarding the layoffs that have occurred during this period, but had they not occurred it appears that the reserves may well have been in worse shape and the layoffs do not alter the fact that hard dollar expenditures from the insurance trust have gone up steeply.) It should also be noted that the Union did not specify from where additional funds for the insurance trust should have come. Would the Union have advocated for more staff cuts or increased taxation in an already comparably high tax rate county? If there has been any action, or lack thereof, that could constitute mismanagement, it may well be that the County has not changed benefits or employee contributions as aggressively as would have been prudent; in that instance, the Union's resistance to change has likely made a substantial contribution to such "mismanagement."

The Union's strongest argument is with respect to comparability. When we look at other counties, most are requiring a smaller contribution than Black Hawk employees are presently contributing. County exhibit INS-11 is particularly silly in this regard as it attempts to show the average percentage contributions of employees in comparison counties while totally ignoring those who make no contribution. The comparison data is particularly pronounced with respect to single coverage where Black Hawk County's contribution rate ($25) is already the highest of any in the comparison group. The story with respect to family coverage is not so dramatic, with the current Black Hawk contribution level ($75) above the average, but not the highest in the comparison group by some margin. (Note again that it is impossible to be exact with these calculations, as there exist discrepancies between the Union's and the County's exhibits). The existing $50/month split between single and family contributions appears to be reasonable and perhaps even small given the split seen in some of the comparison counties (e.g., Scott), and this makes some sense when one considers the greater benefits used by those with family coverage. Of course, we do not know the specific coverages these plans provide or the financial health of those individual plans, and neither the Union nor the County presented information showing what premium increases other counties were anticipating for next year. These unknowns somewhat mitigate the influence of the available comparability data.

With respect to prescription coverage, I understand the Union's concern that the County proposal will carve out drug costs from going toward maximum out-of-pocket limits. If I were inclined to recommend a substantial increase in the out-of-pocket limits, this argument would have more weight. As is, those who are using a good amount of drug coverage are already getting a big benefit from the health plan, and increased prescription costs are often one of the driving factors in plan cost increases. As such, I believe there is justification to exclude this expense from the out-of-pocket limit, particularly when combined with the

County's proposed fixed dollar limit employees will have to expend per prescription.

Another insurance issue that was discussed at length was the Union's proposal for a Health Savings Account (HSA) to be offered to employees as an alternative to participating in the self-funded insurance plan. The Union made it explicitly clear that they did not want their proposed HSA to "be in any way managed by the County." I do not believe the Union yet grasps the problem such an option would cause with respect to adverse selection, i.e., the youngest and healthiest members would be the ones most likely to leave the self-funded plan, thereby leaving what is already a substantial problem to grow into a flat out funding crisis.

It may be enlightening if the groups would explore the option to move everyone to a HSA with a significant (e.g., 1500/3000) deductible. It would be interesting to see what kind of bid the County could get for this kind of plan. The County could then pay a good portion of the premium and fund the HSA accounts of employees (perhaps $750/year for single and $2000/year for family). This could have some benefit all around, i.e., the County gets out of the insurance business (never a bad idea), costs could be better controlled and predicted, employees may or may not experience additional costs depending on their use of health services, and employees would have the benefit of "owning" the dollars that go into their HSA to benefit them if they remain healthy. Even the exploration of such a significant change is obviously complicated by the need to negotiate with eight separate units, and likely could only be explored meaningfully by the use of a mechanism outside the bargaining process, particularly considering the adversarial tone that appears to exist between the County and at least the three PPME units.

What we do know is that this self-insured health plan is not in strong financial condition. We know that the County has been putting in substantial additional premium funds over the past several years, yet the trend in the health insurance

trust has not been one of improvement. We know that a broad committee comprised of representatives from several stakeholder groups conducted a thorough study of this issue in 2003. (Note that this Union was also invited to participate in the process and declined to do so). We know that four other negotiating units have largely agreed to the changes proposed by the County.

Change needs to occur, and a limited number of options are available: (A) the County can put in more money per employee, (B) employees can pay more toward their own coverage, (C) anticipated trust expenditures can be lowered by reducing benefits, or (D) a combination of any or all three. The County is proposing option D, a combination of all three. The Union is proposing option A with only a modest assist from a $15/month increase in employee contributions for family coverage, plus a proposal (i.e., an HSA option) that would likely result in putting the present self-funded plan in even more financial distress.

The County's request to insert the words "substantially" into the language of the health and dental plans is also reasonable. The Union says the County has "mismanaged" the health plan while yet not wanting to give the County the flexibility to more effectively accomplish the goal the Union says it desires, i.e., better management. They can't have it both ways. If you want the County to manage the plan as effectively as possible, then the County certainly needs to have at least enough flexibility to secure competitive bids for such coverage as reinsurance. The present language could prevent the County from even securing competitive bids – a situation that is harmful to all except the current insurance carrier. The Union seems to see a sinister motive behind such a County request without evidence of the County having shown any intent to do anything more than restore a secure health plan for its employees – all of its employees, not just those in this Unit. Some appear to believe that employers have no motive to maintain good working conditions but for the protections of a collective bargaining agreement. If one even takes a cursory look into the marketplace, this is manifestly untrue. Employers have a considerable interest in attracting

and maintaining good employees, and maintenance of equitable benefits play an obvious role in securing that objective.

The County assertively stated on several occasions that their position on insurance was their arbitration position. If so, they are unfortunately headed to arbitration. As I will discuss briefly in the next section, I find worthy of consideration the County's argument that I must find for their position in total due to their claimed history of pattern bargaining, but I do not find it to be determinative. Although I am persuaded to recommend much of the County's proposal, I cannot recommend the entire County position on insurance. Sometimes one must take a step at a time, and here the County is asking for too large of a single step for this particular Unit, e.g., to double the single contribution in one year is too large of an adjustment, and it is important to note that three of the other four Units, which the County points out to have already settled for the $50 single contribution for next year, were this year at contribution rates $35, $35 and $45 – substantially above the $25 rate of this Unit.

The Union will also be unhappy with my recommendations, and I fully appreciate their concern about the financial impact insurance changes can have on employees who are not highly paid. But the Union must face the fact that health costs have increased significantly and such factors are well beyond the control of the Employer. Employees must be willing to equitably share the burden of cost increases; many of the County's proposals are reasonable in light of the relatively high current premiums needed to fund a solid health insurance program for County employees, the County's significantly increased premium payments per employee insured, the weak financial condition of the County, and what other bargaining units within the County have accepted.

The following recommendations are an attempt to address the County's legitimate need to lower plan expenses, have Employees contribute more to their own coverage, yet maintain what should be the primary function of insurance: to

protect individuals and families from the major expenses that can be financially crippling to low and moderate income individuals and families. The monthly contributions, office co-pay, and deductibles should be increased; the County's proposal regarding prescription coverage should also be approved. (I do note that this can be a burden on those who have high prescription expenses, however, it is also fair to point out that such individuals are also likely deriving a very high benefit from the insurance plan.) The In Network maximum out-of-pocket should this year remain at current levels (same as will be in effect next year for Units 4 and 5), however, a subsequent increase in this amount may be necessary if trends do not improve with the trust reserves.

All parties should recognize that health insurance benefits will constitute an active part of the bargaining process for the foreseeable future. Additional employee contributions and plan adjustments may well be necessary, employees should endeavor to become better consumers of heath care, and employers should be diligent in looking for constructive alternatives and administrative cost savings wherever possible.

RECOMMENDATION:

- Increase Single Monthly Contribution from $25 to $40
- Increase Family Monthly Contribution from $75 to $100
- Increase Single Deductible from $250 to $500
- Increase Family Deductible from $500 to $1000
- Increase Co-pay for Office Visits from $10 to $15
- Increase Out-of-Network Deductibles from $600/$1200 to $1000/$2000
- Out-of-Pocket Maximum In Network remains at $750/$1500
- Out-of-Pocket Maximum Out-of-Network remains at $1,500/$3000
- Retail and Mail Order Prescription Benefits – The County's Position

- The Union proposal for the creation of an HSA option is **not** recommended.

- I recommend the County's proposal to change the relevant language in ARTICLE 21, Section 1, to read: *"The Employer shall have the exclusive right to select the carrier for such insurance. The Employer agrees to maintain group health insurance for each employee substantially equivalent to that in effect on the effective date of this agreement."* and to change the last sentence of ARTICLE 21, Section 3, "*The Employer shall maintain the exclusive right to select the carrier for such insurance without substantial reduction or substantial change in benefits."*

Wages

Position of the Union: A 3% across-the-board increase on July 1, 2006 followed by an additional 3% across-the-board increase effective January 1, 2007.

Position of the County: A 2% across-the-board increase retaining current language that the new pay rate will begin at the start of the pay period closest to July 1, 2006.

Discussion: The Union is asking for a 3%/3% wage increase, i.e., 3% July 1, 2006 and an additional 3% on January 1, 2007. The County repeatedly characterized the Union position as a request for a "6% settlement" – a mistake given that the second 3% kicks in at the middle of the year. It is actually a 4.6% salary increase proposal from the Union, although I do understand the County's assertion that such a second half-year increase would still be part of the base to which subsequent wage increases would be added. The Union acknowledges their wage position to be well above settlement trends, explaining its proposal is made in part to allow the Fact Finder adequate salary room if inclined to recommend a good part of what the Union sees as the County's extreme

proposals on health insurance. The County costs the total package proposal from the Union at 8.45% - an elevated amount due to the 6% assumption covered above. The accurate costing would be closer to 7%. The County is proposing a 2% increase, which they acknowledge to be below internal and external settlement trends. The total package cost for the County's proposal would be 4.6%.

The County robustly asserts that there is a long record of "pattern bargaining" in Black Hawk County, and the results of this year's negotiations would thus far bear that out. With two of the eight bargaining units having settled, two others in the second year of multi-year agreements, and one of the other units reported to be near settlement, all four settled units have agreed to a 2.75% across-the-board wage increase. The County provided copies of numerous recent fact-finding and arbitration awards that have noted this history of pattern bargaining. The County sees this as important, and even suggests it should be determinative, with respect to both wages and insurance. The Union does not acknowledge or deny that there has been pattern bargaining in the past, but they do assert that it neither will nor should be a dominant factor going forward. It would also seem that strict adherence to rigid pattern bargaining could inhibit an employer's ability to change pay rates differentially according to market factors for given skills and talents. For example, should a county have difficulty recruiting or maintaining deputies, talented secretaries, or CNAs for a care facility, pattern bargaining would seem to prevent an effective wage offer response to the unique market factors of a given portion of a county's operation.

While it is obvious that neither the County nor the various negotiating units here bargain in a vacuum, and there is resultantly coordination in the bargaining process, even the County's own exhibits purporting to demonstrate this long history of pattern bargaining show that in only twice in the past decade have each of the eight bargaining units settled for an identical wage increase. In short: pattern yes, lockstep no.

The external settlement trends are sparse, allowing for only a limited sense of what is happening across the State or even in the comparison counties, but it would appear that settlements from 2.5% to 3.75% are commonplace. These settlements largely constitute a grab bag of reports from a wide variety of counties and employee classifications. Neither party provided information regarding the total package settlements for other counties. With insurance now such a significant part of total compensation, it makes fine comparisons almost an exercise in silliness when such a large part of the puzzle is not available for consideration

As an aside, it was interesting that both parties alternate between suggesting that I should or should not consider the wage increases of employees doing different jobs. At one point the County advocates that I should be committed to a recommendation that tracks what the other units have accepted. When it is pointed out that the deputies have quite a different scale structure, however, the County then cautions that I should not attempt to make wage comparisons between groups whose members do very different jobs. The Union bounces back and forth with this argument as well.

Exhibits from both parties show the employees in this Unit to not be highly paid in comparison to their peers working in the comparison counties. For example, on County Exhibit W-9, it is noted that the starting County wage for an Office Associate is below all but one of the comparison groups and the high salary falls below 8 of 10 of the comparison group salaries. Office Specialists appear to fall toward the middle and both Support Recovery Officers and Network Technicians appear to be on the low side in comparison to the group reported.

Counterbalancing the relatively low pay comparisons, the County presented much material to show that the general financial health of County is not robust. Several recent neutrals have acknowledged this fact and the Union did not

contest this characterization. The County has a relatively high tax rate, high debt, a low growth rate with respect to population and revenue, and a low fund balance in comparison to counties in the comparison group. The County conceded that it is not arguing an inability to pay, but did assert a relative inability to pay vis-à-vis other counties.

It is important to recognize one factor that makes this Unit distinct from the other units that bargain with this County. This Unit has a vast majority of their employees (87%) at top level of the salary scale, i.e., they will only receive the percentage increase and not the additional 5% associated with another step. Of the six other bargaining units that have a stepped salary schedule, all have more employees who are eligible for step increases, i.e., contrasted with the 13% who are eligible in this Unit, the other units have 43%, 23%, 75%, 76%, and 51% eligible for step increases. (It should also be noted that the Deputies Unit, and perhaps other bargaining units as well, have many more steps available to them than do the employees in this Unit.) The result may well be that the other bargaining units that have voluntarily settled for a 2.75% wage increase would be more likely to accept such an offer given the higher percentage of their members who will receive both the across-the-board increase and the significant value of a step increase. Finally, it is noted that two of the bargaining units have a different pay mechanism as the number of steps is listed on County Exhibit W-7 as n/a. In both instances the average wage of the employee is substantially above the average wage of Unit 1 employees. As such, a smaller percentage increase for employees in these more highly paid units may well increase their take home pay more than a larger percentage increase for Unit 1 employees.

This wage scale placement factor for current employees in this Unit is an important consideration for my recommendation, so I want to be clear on this point. The average of percent of individuals eligible for a step on the salary scale in the five other units detailed in the preceding paragraph is 53% – contrasted to the 13% eligible in Unit 1. If Unit 1 had 53% if its members eligible for a step

increase, it would increase the cost of this package by more than $44,000 less any accompanying savings that might result from lower longevity payments due to a less experienced staff. A good case can be made that in this instance, a strict adherence to across-the-board percentage increases here ignores a meaningful aspect of the picture. An increase of 3.25% will add roughly $12,000 to the cost of this package over the 2.75% settlement rate accepted by the two other units who have so far settled contracts that were open this year. It will result in a wage increase of roughly $1,000 for capped employees – an amount that can just offset the increase in family contributions, family deductible amount, and drug plan changes recommended above. Given the average wage rate of the employees in this Unit, the external settlement trends as we know them, the significant insurance changes I believe necessary despite a lack of comparability data to support them, and the high number of employees in this Unit who will not receive a step increase; a recommendation for a 3.25% increase is a reasonable wage settlement.

The Union's request to change the existing language that states that the new wage rate will be *"effective the start of the pay period closest to July 1"* to language that the new rates start on July 1, appears reasonable. I suspect the reason for the County's support of the current practice is to avoid having to adjust compensation rates in the middle of a pay period. Because the language would suggest that the new pay rates could just as well be implemented before July 1 as after, it would appear that this practice would, over time, balance out. Nevertheless, the Union is correct that its new insurance rates will go into effect promptly on July 1. In addition, the reason for delaying salary adjustments beyond July 1 is totally one of administrative convenience – helping to avoid a process that is not all that onerous any longer with most modern payroll software. Although we are talking about a small cost difference here, it would seem the most reasonable approach would be to allow the County flexibility on when they wish to start the new contractual salaries, but yet insure that employees will not lose money to accommodate what is a clearly a County administrative function.

If the County wants such administrative convenience, I would suggest that the County offer language that provides the County with the flexibility to start new pay rates no later than July 1, 2006. For the purpose of this hearing, I recommended that the new wage rates go into effect July 1, 2006.

RECOMMENDATION:

A 3.25% across-the-board wage increase plus step movement effective July 1, 2006.

Respectfully Submitted,

Kim Hoogeveen, Ph.D.
Fact Finder
6404 North 70th Plaza
Omaha, NE 68104

CERTIFICATE OF SERVICE

I certify that on the 11th day of February, 2006, I served the forgoing fact-finding recommendation upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Mr. Gary Ray
4403 First Avenue SE, Suite 407
Cedar Rapids, IA 52402

Mr. Joe Rasmussen
P.O. Box 69
Alburnett, IA 52202

I further certify that on the 11th day of February, 2006, I will submit this recommendation for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319-0203.

Kim Hoogeveen, Fact Finder